

Inquiry into Family Violence Orders

July 2024



Barnardos
Australia

To:	House of Representatives Standing Committee on Social Policy and Legal Affairs
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From:	Barnardos Australia
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Subject	Inquiry into Family Violence Orders
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Barnardos Australia (Barnardos) is a well-recognised and prominent not-for-profit children's social care organisation and registered charity. Each year, our integrated Children's Family Centres (CFCs) provide direct care and support to over 11,000 children, young people, and their families in the Australian Capital Territory (ACT) and New South Wales (NSW) (Moore, 2023).¹ Barnardos CFC services are geographically located in, and targeted to reach, specific areas of poverty and socio-economic disadvantage. Barnardos also provides foster care for over 1,200 children, the majority of whom are referred to us by statutory child protection departments, with poverty a directly contributing factor to childhood neglect.

We work in areas with significant Aboriginal populations, such as Central West NSW, the South Coast, Western Sydney, Inner Sydney and the Queanbeyan-Palerang region. For nearly 100 years, we have been working together with children, young people and families to break the cycle of disadvantage and create safe, nurturing and stable homes connected to family and community. For the last nine years, we have operated as the Lead Agency for the ACT Together Consortium, delivering services in partnership with the Community Services Directorate (CSD) for children and young people on ACT Children's Court orders.

Barnardos vision is to empower every child in Australia to reach their full potential. To ensure that all children reach their brightest future, vulnerable children and young people should be supported to recover and thrive despite the adversity they have experienced.

Barnardos welcomes the opportunity to provide feedback to the House of Representatives Standing Committee on Social Policy and Legal Affairs on how the Australian Government can better provide victim-survivors in the family law system with access to Family Violence Orders (FVOs), how those orders can be better enforced, and what supports are needed.

Barnardos' knowledge of this area

Domestic and family violence (DFV) heavily impacts the lives of the children and families Barnardos supports and is one of the most common reasons for referral for families to services delivered by Barnardos Children's Family Centres. Our data indicates that 80% of referrals for families to Brighter Futures and Family Preservation services have DFV as a referral reason. In rural NSW, DFV continues to be the number one referral reason to Barnardos homelessness services. In Penrith, an outer metropolitan area of Sydney, 90% of family referrals to our intensive family preservation program (for families who have children at risk of significant harm and are at risk of placement in out-of-home care) have DFV identified as one of the main reasons for referral.² Further, in FY21, nine out of ten (89%) of children and young people in Barnardos' out-of-home care (OOHC) have domestic and family violence identified as a critical contributory issue to the need for care by the NSW Children's Court.³

As a large non-government provider of safety and prevention and OOHC services to children and families vulnerable to DFV, Barnardos is deeply committed to successfully implementing the measures under the National Plan to End Violence against Women and Children 2022-

¹ Moore, K. (2023). Barnardos Children's Family Centres: Integrated local service delivery for vulnerable children and their families. Barnardos Australia: Sydney.

² MyStory Referral Analysis Report.

³ Barnardos Annual Review 2020-2021; MyStory Referral Analysis Report for NSW (Barnardos Agency) and ACT Together out-of-home care programs.

2032, the First Action Plan 2023-2027 and the Aboriginal and Torres Strait Islander Action Plan 2023-2025, the proposed ACT Domestic, Family and Sexual Violence Strategy, the NSW Domestic and Family Violence Plan, the dedicated NSW Aboriginal Family and Sexual Violence Plan, and other existing policies, strategies and plans to support a unified national approach to the prevention and elimination of domestic, family and sexual violence over the next ten years.

The children, young people, families, kin, and carers we work with, fall within population groups who experience disproportionately higher levels of violence and coercive control, including:

- women
- Aboriginal women
- children and their mothers in contact with the child protection system, for example, those receiving family preservation and support services for non-offending parents and their children
- women and children who are experiencing homelessness
- adults who have experienced abuse as children
- young women and adolescents
- women with mental illness
- women in pregnancy and early motherhood
- women with disabilities
- LGBTQIA+ people
- migrants, refugees and people who are culturally and linguistically diverse.
- women who live in regional, rural and remote areas
- women who have previously been victims of sexual assault at any point in their lives.

The Terms of Reference

We commend the Standing Committee's focus on what can be done at a federal level to make applying for court orders easier for victims already negotiating the family law system and how those orders can be more effective in keeping families safe.

Below is our feedback and commentary on the current barriers for victim-survivors in the family law system to obtain and enforce FVOs and our suggestions for improvements and reforms to make the system safer and fairer for victims-survivors who need the protection of FVOs.

1. The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.

- FVOs are mechanisms under state and territory law that aim to protect individuals from violence in family and interpersonal situations. In NSW, they are known as Apprehended Domestic Violence Orders (ADVOs); in the ACT, they are Family Violence Orders.
- In NSW, individuals over 16 years old and Police Officers are eligible to apply for Apprehended Violence Orders (AVOs), which include ADVOs.
- Parenting Orders frequently mandate shared care and decision-making between separated parties and, where these are inconsistent, may override the protective constraints of an ADVO. Should the protective parent wish to vary or revoke the obligations in the Parenting Order that are inconsistent with the ADVO, they may need to appeal the Parenting Order or make a further application to the Court.
- Barnardos believes that inconsistency between court orders significantly increases the risk to children, exposing them to harm from parents who exhibit violent and controlling behaviours.
- This heightened risk increases the danger for children and partners, exacerbating the impact of the parent's violent and controlling behaviours. It also intensifies the challenges and complexities faced by all parties involved in family court proceedings.
- Our concern is that children are frequently not included as protected persons in ADVOs, which overlooks their need for protection from family violence alongside adult victims.
- Navigating the discrepancies between Parenting Orders mandating shared care and ADVOs, particularly when only the parent is named as the protected person, often renders children invisible as victim-survivors. This can lead to unsafe parenting arrangements that compromise the safety of all family members involved.
- Further, the law on contravention of Parenting Orders is complicated. Where families do not have an FVO in place, state and territory police officers are reluctant to be involved in disputes about the child's care, welfare, or development and how the child will communicate with the parent they do not live with when they perceive these as arising from an order made in the Federal jurisdiction.

2. The current barriers for litigants in the family law system to obtain and enforce FVOs.

- a. The additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO.*
- Family Law courts are often located far from where victim-survivors reside. Many women and children in regional and remote communities are forced to travel long distances, sometimes spending hours on the road while children miss attending school to meet court obligations.

- This results in disruption to schooling, significant fuel expenses, lost wages from taking time off work, and logistical challenges like being unable to pick up children on time when Parenting Orders are in place. These hardships are, in turn, then unfairly used against victim-survivors during court proceedings, such as criticisms about children missing school or financial strains impacting their ability to care for their children.
- The lack of uniformity between FVOs across different state and territory jurisdictions poses significant challenges for families fleeing family violence when they relocate between states. This inconsistency also results in disparities in outcomes for victim-survivors based on their place of residence.

b. The intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO.

- In our earlier response to Term of Reference 1, we highlighted concerns about the inadequate alignment between FVOs and Parenting Orders.
- There is a pressing need to address inconsistencies between FVOs and Parenting Orders to prioritise children's safety and ensure they are recognised as individuals requiring protection from family violence.
- The discrepancy in duration between FVOs (typically two years) and the extended length of family law court proceedings, coupled with the varied procedures across state and territory jurisdictions for applying and enforcing FVOs, present significant barriers to ensuring the ongoing safety and security of victims of family violence.

c. The availability of wrap-around support services and security for victims of violence.

- There is a critical shortage of readily available support services for victim-survivors, especially specialised recovery and healing support for children and young people. This service gap can leave them feeling isolated, ashamed, and without adequate support. The fragmented service landscape further worsens this isolation, often causing families to be caught in a cycle of referrals between services that are ill-equipped to meet their specific needs as survivors of violence. Time-limited services that cannot support families for the duration of family court proceedings compounds this significant service deficit.
- In our experience, children's well-being is often compromised during family law court proceedings, adversely impacting their mental health, school attendance and engagement, educational achievements, and peer relationships. Counsellors may hesitate to intervene, concerned that their case files and clinical notes could be subpoenaed as evidence against the protective parent in court.
- Family law court proceedings can be lengthy, and existing support services cannot often provide sustained assistance throughout as they are not funded to do so. Mothers who represent themselves due to financial constraints face daunting legal complexities without adequate legal knowledge. Many victims return to unsafe environments due to housing shortages.

- Victim-survivors frequently face challenges in understanding the conditions and consequences of their AVOs/FVOs. Moreover, they often cannot access Legal Aid if the parent using violence has already utilized these services. These difficulties are compounded by trauma responses, which can be misunderstood, further hindering their ability to maintain relationships and secure advocacy and representation reflecting their lived experiences.

3. How FVOs could be more accessible for victims of violence going through the family law system.

a. Making it easier to apply for and enforce an FVO.

- When victim-survivors are already vulnerable, applying for an FVO on their own behalf and on behalf of their children could further jeopardise their safety. Allowing others, such as child protection statutory departments or other appropriate authorities, to apply for an FVO on behalf of the victim would offer an additional layer of protection. This approach alleviates survivors from the burden of responsibility. It reduces the fear of retaliation from the parent using violence, particularly when children are named as protected persons by the applicant. Barnardos considers this to be the most crucial recommendation the Committee could make to simplify the process of applying for an FVO.
- Further, increasing the length of FVOs from two to five years to better match the typical duration of family law court proceedings and making the order nationally recognisable would significantly mitigate risk to adult and child victim-survivors.

b. Co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia.

- Barnardos strongly supports the Committee recommending measures to establish co-location arrangements that would facilitate FVO applications or enforcement hearings in the same physical location as the Federal Circuit and Family Court of Australia.
- Further financial and accommodation assistance and increased support services must be provided to victim-survivors in regional and remote areas to enable them to attend Court without experiencing additional hardship for them or their children.

c. The legal and non-legal support services required to promote early identification of and response to family violence.

- In our view, the heavy reliance of Courts on police evidence and incident reporting for family violence can disadvantage adult victim-survivors who have been closely controlled and avoided involving police or health authorities due to safety concerns. This difficulty hinders their ability to establish a clear pattern of domestic and family violence, leaving them vulnerable to further abuse.
- Instead, Courts should prioritise the insights of non-government family support and children's social care professionals. These professionals can provide expert testimony and detailed assessments of the harmful behaviours exhibited by the parent using violence, as well as their impacts on the family and child functioning. This approach ensures a more

comprehensive understanding and consideration of the complexities involved in these cases.

- Furthermore, these professionals have developed a deep rapport and trusting relationships with children, who feel comfortable confiding their safety concerns to them without fear of repercussions. This level of trust and understanding cannot be replicated in a one-time assessment with a court-appointed consultant, however experienced they are. It ensures that children can provide their unfiltered views over time to a trusted adult who understands the dynamics of families experiencing family violence and with whom they have an established relationship.
- Individuals from culturally and linguistically diverse (CALD) backgrounds experiencing violence, including migrants and refugees, frequently encounter intricate challenges when attempting to access services and navigate the family law system. Support workers, early childhood education and care professionals, teachers, nurses, legal professionals, court staff, and State and Territory police must cultivate cultural understanding to help women from CALD backgrounds identify abusive behaviours, access FVOs and ensure they receive services prioritising their safety.
- Due to systemic racism, sexist stereotypes, intergenerational trauma, and other structural factors caused by colonisation, Aboriginal women and children are disproportionately vulnerable to harm from family violence, especially when the parent using violence is non-Aboriginal.
- This vulnerability can be exacerbated by cultural biases leading to misidentification of the perpetrator by state and territory police and child protection statutory authorities. Careful and culturally safe assessment by trained practitioners who understand domestic violence is crucial to accurately map the harmful behaviours of parents who use violence and their impact on children, ensuring that interventions support rather than harm these families.
- Babies and very young children are exceptionally vulnerable to the impact of violent parental behaviours, in extreme cases including filicide. The Committee should, therefore, consider specific safeguards to protect babies and infants from family violence.
- Barnardos believes it is crucial to recognise that an FVO is only effective if properly enforced and implemented. There is a pressing need for enhanced education about domestic and family violence and its enduring impact on women and children among State/Federal Police and Family Law professionals to ensure consistent and effective enforcement. Further, this training must encompass identifying the perpetrator, coercive control, the need for cultural safety and dispelling prevalent myths. Simplifying the process of enforcing orders is essential; victim-survivors should not have to navigate a complex and often ineffective system that spans multiple jurisdictions without meaningful resolution. These steps are necessary to enhance safety and protection for both children and adult victim-survivors of domestic violence.

Additional information

Barnardos would be happy to provide expert advice to the House of Representatives Standing Committee on Social Policy and Legal Affairs to assist the Committee in completing

its report on how to better provide family law victim-survivors with access to Family Violence Orders and the effective enforcement of those orders.

Our Chief Executive Officer, Deirdre Cheers, is available to discuss our submission and provide detailed verbal feedback to inform the Office's work. Noting the Committee's commitment to continued collaboration with victim-survivors, if the opportunity is available for local engagement and consultation with children, young people, and families, we could also provide input from our clients who are victim-survivors in the family law system with lived experience of domestic, family and sexual violence.

Thank you once again for the opportunity to provide this written submission. Please contact Melissa Bell, Executive Leader Practice Quality at mbell@barnardos.org.au or 0408 609 143 should you require further information on our feedback.